Re TAY TUAN DECD.

[O.C.J. (Adams J.) June 20, 1962]

[Muar — Petition for L.A. No. 98 of 1951]

Administration — Revocation of Letters of Administration — Preliminary steps to be taken — Procedure in administration proceedings.

The preliminary steps to be taken by a party who desires to obtain the revocation of a Grant of Letters of Administration are: (1) enter a caveat; (2) follow it with the extraction of a citation to the administrator to bring the grant into the Registry. This should be followed by the issue of an originating motion.

Procedure by way of motion in the administration proceedings is not correct.

MOTION.

D. A. Devadason for the applicant.

F. Keith Sellar for the petitioner.

Adams J. (delivering oral judgment): This is a motion for an Order that a Grant of Letters of Administration to the Estate of the deceased issued out of the Muar Registry on 28th July, 1952 be revoked and issued to the present applicant.

The procedure is misconceived. Before an action of this nature can be commenced there are certain preliminary steps to be taken. The party who desires to obtain the revocation must first enter a caveat and then follow it with the extraction of a citation to the administrator to bring the Grant into the Registry. This should be followed by the issue of an Originating Motion. Procedure by way of motion in the administration proceedings is not correct.

For the above reasons the motion must be dismissed. But even on the facts, the proceedings if they were in order would have to be dismissed because the applicant had deposed that the deceased to whose estate he seeks representation died in China on the 21st December, 1945 but the deceased in respect to whose estate the present grant refers died in Tangkak on the 10th December, 1949. This is proved by the certificate of death.

The applicant must pay the costs of these proceedings.

Order accordingly.

Solicitors: *D. A. Devadason; Sault, Keith Sellar & Co.*

Re SEMANTAN ESTATE (1952) LTD.

[O.C.J. (Ong J.) February 14, 1962]

[K.L. — Companies (Winding-up) No. 2 of 1961]

Company Law — Winding-up — "Just and equitable" — Strained relationship between directors — Impossibility to conduct business — Companies Ordinances, 1940 to 1946.

This was a petition to wind up a private company incorporated in 1952 with a fully paid-up capital of $1,000,000 divided into 1,000 shares of $1,000 each. The petitioner and one N.C.S., the subscribers to the Memorandum of Association, together with members of their respective families, held the shares equally. Differences arose between the petitioner and N.C.S. in 1957 and strained relationship between the parties gave rise to further grounds of dissatisfaction which have been assigned as additional reasons in support of the petition. The petitioner submitted that for these reasons it had become impossible to conduct the business of the company according to law and the regulations of the company and that in the circumstances it was just and equitable that the company should be wound-up.

Held: (1) on the facts of the case, the petitioner had been more unreasonable than co-operative, and any deadlock so-called was one created entirely by himself;

(2) wounded pride on the part of the petitioner over fancied slights could not make it "just and equitable" that the court should make the order which was sought;

(3) the interests of the share-holders must be considered, and in the circumstances of the case the court was not satisfied that it would be just and equitable to wind-up the company in so far as they were concerned;

(4) even regarding the private company as a partnership, the court will never permit a partner by rendering it impossible for his partners to act in harmony with him, to obtain a dissolution on the ground of the impossibility so created by himself;

(5) in the circumstances the company could carry on with advantage and profit to all its shareholders.

Case referred to:—

(1) *In re Yenidge Tobacco Co. Ltd.*, [1916] 2 Ch. 428, 432.

COMPANIES WINDING-UP.

Robert K. C. Hoh for the petitioner.

S. T. Chung for 3 contributories holding total of 450 shares.

C. H. Smith (*R. R. Chelliah* with him) for 10 contributories holding 445 shares.

Ong J.: The petition herein was presented by Ng Eng Hiam to wind up the above-named company on the ground that it was "just and equitable" that such an order should be made. At the conclusion of the hearing I dismissed the petition with costs.

The company, which is a private company, was incorporated in May 1952, with a fully paid-up capital of $1,000,000 divided into 1,000 shares of $1,000 each. The objects of the company were to carry on business as rubber planters and estate owners. The subscribers to the Memorandum of Association were Ng Eng Hiam, the petitioner, and Ng Chin Siu, both prominent landowners of Kuala Lumpur. Each of them, with members of their respective families, holds 50 per cent of the shares. It had been agreed that the petitioner and Ng Chin Siu should have equal rights of management and voting powers. The articles of association were accordingly so drawn up that they, the heads of each family, became permanent directors but the chairman was disentitled to a further or casting vote, while restrictions placed on the transfer of shares further ensured parity of voting strength at all times, except in the event of a member or members of one family defecting to the other, which has not yet occurred in the history of the company.

Between 1952 and 1956 the company acquired three rubber estates totalling a little

over 4,500 acres, which it still owns, save for a portion of one, the Batu Estate, in Kuala Lumpur, which had been acquired by the Government. The company has been highly successful in its operations, and in his petition the petitioner himself stated that there would be a substantial surplus for the shareholders in a winding-up, which surplus was said by the respondent's counsel to be in the region of $2,000,000 cash.

Differences arose between the petitioner and Ng Chin Siu in 1957 over two matters in particular. First, at a meeting of the Board of Directors on May 24, 1957, Ng Kee Wei, the general manager of the company and eldest son of Ng Chin Siu, had claimed a special bonus for services alleged to have been rendered by him in connection with proceedings relating to the acquisition by Government of part of the Batu Estate, which claim the petitioner had felt constrained to oppose. Second, in or about September, 1957, a contract had been given by Ng Chin Siu and Ng Kee Wei without the petitioner's knowledge to one Ng Choon Chiau for felling jungle trees on Semantan Estate on terms said to be less favourable than those offered by another contractor, Goh Chew Yik, who had been introduced earlier to the company by the petitioner, and it was alleged that the petitioner had not been able to ascertain the circumstances or the precise terms on which the contract had been given out.

Over these two matters — which in truth were of a trivial nature, considering the magnitude of the company's business operations and its handsome profits — the two permanent directors ceased to be on speaking terms from the beginning of 1958. The strained relationship between these parties subsequently gave rise to further grounds of dissatisfaction which have been assigned as additional reasons in support of the petition for winding up the company.

These further grounds are contained in paragraphs 17, 18, 19 and 20 of the petition, and are as follows:

"17. After the said disputes and differences arose your petitioner was for a time supplied with the monthly accounts but at longer and irregular intervals. In particular, to the best of your petitioner's knowledge, information and belief, he as supplied with the Semantan estate annual estimates for 1958 in or about May, 1958, the Semantan estate monthly estate accounts for the period January, 1958 to April, 1958 in or about December, 1958 and the monthly accounts for May and June, 1958 in or about January, 1959; and the Batu and Segambut estates monthly accounts for the period January 1958 to October, 1958 on different dates between January and March, 1959. Since then he has not been supplied with any other subsequent annual estimates or monthly accounts, contrary to the established practice of the company and in spite of repeated requests made by your petitioner for such estimates and accounts.

18. The registered office of the company is situate at No. 19, Ampang Road, Kuala Lumpur, which together with the adjoining premises No. 21, Ampang Road, is the residence of the said Ng Chin Siu and his family. To the best of your petitioner's knowledge, information and belief, the books of account and other records of the company are kept in a room in premises No. 21, Ampang Road, which is also used as a private office of the said Ng Chin Siu. By reason of the strained relationship that has existed between your petitioner and the said Ng Chin Siu since sometime in 1957 it has not been and is not possible for your petitioner to visit the said premises and inspect the books of account and other documents, and your petitioner has in reality been deprived of his right of access thereto.

19. Save as to certain matters connected with the acquisition proceedings relating to part of the Batu estate in respect of which the concurrence of the two permanent directors was obtained through the secretaries of the company, and save as to two directors' meetings called for the 17th day of June, 1958 and 12th November, 1958 at which, by reason of differences, no business could be conducted, and a third meeting held on the 27th day of November, 1958 at which the strike situation on the company's rubber estate was directed to be referred to the company's legal advisers, there has not been any meeting of the directors, either formal or informal, to transact any of the company's business since the beginning of 1958. And the business of the company has been conducted, by the said Ng Chin Siu, and, in particular, all sales of rubber effected and all cheques on the company's bank account drawn by the said Ng Chin Siu with (as far as your petitioner is aware) the assistance of the general manager and secretaries of the company, but without the concurrence of your petitioner, contrary to law and the articles of association, since the said Ng Chin Siu had and has no power to act alone on behalf of the board of directors.

20. No annual general meetings of the company were held during the years 1958, 1959 and 1960. A general meeting convened by the secretaries without the authority of your petitioner was held on the 27th day of May, 1961 before which were laid what purported to be the directors' report and the balance sheets and profit and loss accounts for the years 1957, 1958 and 1959, none of which were signed by your petitioner, the reason being that your petitioner not having had the opportunity of scrutinising the accounts or taking any part in the conduct of the business during the relevant years declined to accept responsibility therefor. At the said meeting your petitioner proposed that the consideration of the said purported directors' report and the accounts be adjourned to enable him to inspect the accounts; 2 amendments to the resolution having been moved, your petitioner demanded a poll which the said Ng Chin Siu, as chairman of the said meeting, wrongfully disallowed, whereupon your petitioner and his supporters left the meeting, they being in a minority if a vote was to be taken on a show of hands only but in respect of which they could secure a majority if a poll was allowed."

For the reasons stated above the petitioner submitted that it had become impossible to conduct the business of the company according to law and the regulations of the company and that in the circumstances it was just and equitable that the company should be wound up.

The statements in the petition were verified by an affidavit of the petitioner sworn on October 23, 1961, and, by a further affidavit of November 25, 1961, the petitioner stated that during 1958 and 1959 he had made several attempts to resolve these differences with Ng Chin Siu "which rendered it impossible for the company to carry on its business in the normal and lawful way". The proposition which was put up to Ng Chin Siu by the petitioner, briefly, was that the assets should be equally divided between them by drawing of lots, with such adjustments by cash payment as might be necessary, and, in the alternative, a voluntary winding-up of the company. Ng Chin Siu, however, would neither agree, nor offer any alternative terms acceptable to himself. These circumstances were further urged as just and

equitable grounds for the Court to make the order sought.

The shareholders giving notice of their intention, and duly appearing at the hearing, to support or oppose this petition were for all practical purposes, equally divided, except as to 10 shares, which may be ignored. The members of each family aligned themselves according to their respective loyalties.

An affidavit on behalf of those opposing the petition was filed by Ng Kee Wei, to which the petitioner filed an affidavit in reply. It is unnecessary to set out their contents, except to state generally that, in Ng Kee Wei's affidavit, apart from traversing the various allegations contained in the petition and giving an explanation of the relevant circumstances, it was expressed that the petitioner's every reasonable wish would have been and would continue to be met with courtesy and in a co-operative spirit by his associates.

In dismissing the petition at the conclusion of the hearing, I had been, and still am, clearly of the opinion that the two matters which arose in 1957 were the root cause of all the ensuing friction. I felt no doubt that Ng Kee Wei's claim to a special bonus had been made with his father's blessing, and that, when the petitioner felt constrained to voice his opposition, the former congeniality which had subsisted between the two business magnates evaporated under the heat of nothing more calorific than injury to personal self-esteem. Had Ng Chin Siu, or his son, informally breached the subject earlier to the petitioner, over a friendly cup of tea, neither party would have had to take up a position from which any resilement involved an inevitable "loss of face". The proposal, unfortunately, had been made at a Board Meeting, and this difference of opinion had sufficed to cause a rift in the lute. Four months later, the rift was widened by the matter of the choice of a contractor. I shall pass over these two matters by only saying, very briefly, that Ng Chin Siu and Ng Kee Wei had both tacitly acknowledged their want of tact over the matter of the special bonus by dropping the claim, and that, in regard to the jungle-felling contract, had the petitioner condescended to make any genuine attempt to find out whether or not the fancied insult was intended, he could readily have satisfied himself that his allegations of "considerable loss" suffered by the company were exaggerated.

After careful consideration of the affidavits on both sides, I find that all the subsequent complaints by the petitioner flowed from nothing more substantial than pique which he felt over the events of 1957. There were no grounds which could justify what was tantamount to an ultimatum, *vide* the last paragraph in the letter of April 12, 1958, exhibited to the petitioner's affidavit of December 5, 1961 and marked "NEH-1". The reply by the Secretaries, "NEH-2", clarifies the position as seen by a neutral party. Certainly, there were no grounds for "absence of trust". Absence of congeniality could have been, and still can be, overcome. The petitioner had been more unreasonable than co-operative, and any deadlock so-called was one created entirely by himself. I could not, and still cannot believe, that businessmen of the calibre and standing of the petitioner and Ng Chin Siu cannot, if they have to, be large-hearted enough to treat a mutual misunderstanding as if there had never been one.

I had, before the hearing, perused *In re Yenidge Tobacco Company Ltd.* [1], with great care and I have since read it again together with the other authorities cited to me by counsel, and I still am of the opinion that wounded pride on the part of the petitioner over fancied slights could not make it "just and equitable" that I should make the order which was sought. The interests of the shareholders must be considered, and I am not at all satisfied that it would be just and equitable to wind up the company in so far as they are concerned; rather the contrary. Even regarding this private company as a partnership, I had in mind as particularly appropriate what was said in *Lindley on Partnership* (11th Ed.) at p. 692:

> "It must be borne in mind that the Court will never permit a partner by . . . rendering it impossible for his partners to act in harmony with him, to obtain a dissolution on the ground of the impossibility so created by himself."

I felt, as I still do, that the company could carry on with advantage and profit to all its shareholders, and for that reason I had dismissed the petition with costs.

Petition dismissed.

Solicitors: *Eugene Lye & Hoh; Chung & Huang; R. R. Chelliah Bros.*

COMPTROLLER OF INCOME TAX v. R.S.T. (No. 2)

[O.C.J. (Ambrose J.) January 18, 1962]

[Singapore — Summons in Chambers No. 703 of 1961 in Suit No. 488 of 1961]

Income Tax — Notice of assessment under s.86, Income Tax Ordinance (Cap. 166).

Practice and Procedure — Material particulars in statement of claim — What these are in respect of claim under s.86, Income Tax Ordinance.

An action was brought by the Comptroller of Income Tax against the defendant to compel payment of income tax in accordance with section 86 of the Income Tax Ordinance. The defendant, by way of summons in Chambers, asked for an order that the plaintiff deliver to him particulars of certain matters comprised in the claim.

Held: (1) the statement of claim as presented contained all material facts necessary for the purpose of formulating a complete cause of action under section 86 of the Income Tax Ordinance;

(2) as the dates of the notices of assessment referred to in the statement of claim and the dates of service were within the knowledge of the defendant, no additional particulars as to the notices of assessment were necessary to put the defendant on his guard as to the case he had to meet;